

UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

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JONATHAN MONCADA,

Case No. 3:19-cv-00231-MMD-CLB

Petitioner,

ORDER

v.

RUSSELL PERRY, *et al.*,

Respondents.

The Court notes at the outset that no courtesy copies—except as specified at the conclusion of this order—are required in this case at this time.

This action is a petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254.

On January 8, 2020, the Court granted a stay and administratively closed Petitioner Jonathan Moncada's federal habeas corpus action while he litigated his state petition. (ECF No. 20.)

Petitioner's further state-court proceedings have concluded, and he has now returned to the Court seeking to reopen this case. (ECF No. 22.) He also seeks a scheduling order to file an amended petition. Good cause appearing, this action is reopened.

It is therefore ordered that Petitioner's motion to reopen this action (ECF No. 22) is granted.

It is further ordered that, as the stay is lifted by this order, the Clerk of Court is directed to reopen the file in this action.

It is further ordered that Petitioner must file an amended petition within 45 days of the date of this order.

It is further ordered that Respondents must file a response to the petition, including potentially by motion to dismiss, within 90 days of service of the amended petition, with

1 any requests for relief by Petitioner by motion otherwise being subject to the normal
2 briefing schedule under the local rules. Any response filed should comply with the
3 remaining provisions below, which are entered pursuant to Habeas Rule 5.

4 It is further ordered that any procedural defenses raised by Respondents in this
5 case be raised together in a single consolidated motion to dismiss. In other words, the
6 court does not wish to address any procedural defenses raised herein either *in seriatum*
7 fashion in multiple successive motions to dismiss or embedded in the answer. Procedural
8 defenses omitted from such motion to dismiss will be subject to potential waiver.
9 Respondents should not file a response in this case that consolidates their procedural
10 defenses, if any, with their response on the merits, except pursuant to 28 U.S.C. §
11 2254(b)(2) as to any unexhausted claims clearly lacking merit. If Respondents do seek
12 dismissal of unexhausted claims under § 2254(b)(2): (a) they should do so within the
13 single motion to dismiss, not in the answer; and (b) they should specifically direct their
14 argument to the standard for dismissal under § 2254(b)(2) set forth in *Cassett v. Stewart*,
15 406 F.3d 614, 623-24 (9th Cir. 2005). In short, no procedural defenses, including
16 exhaustion, should be included with the merits in an answer. All procedural defenses,
17 including exhaustion, instead must be raised by motion to dismiss.

18 It is further ordered that, in any answer filed on the merits, Respondents specifically
19 cite to and address the applicable state court written decision and state court record
20 materials, if any, regarding each claim within the response as to that claim.

21 It is further ordered that Petitioner has 45 days from service of the answer, motion
22 to dismiss, or other response to file a reply or opposition, with any other requests for relief
23 by Respondents by motion otherwise being subject to the normal briefing schedule under
24 the local rules.

25 It is further ordered that any additional state court record exhibits filed herein by
26 either Petitioner or Respondents be filed with a separate index of exhibits identifying the
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1 exhibits by number. The CM/ECF attachments that are filed further should be identified
2 by the number of the exhibit in the attachment.

3 It is further ordered that, at this time, the parties send courtesy copies of any
4 pleading or motion and indices of exhibits only to the Reno Division of this Court. Courtesy
5 copies are to be mailed to the Clerk of Court, 400 S. Virginia St., Reno, NV, 89501, and
6 directed to the attention of "Staff Attorney" on the outside of the mailing address label. No
7 further courtesy copies are required unless and until requested by the Court.

8 DATED THIS 10th Day of June 2021.

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MIRANDA DU, CHIEF JUDGE
UNITED STATES DISTRICT COURT